In the High Court of Judicature at Madras

Dated: 28/03/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.1131 of 2003
and
WPMP.No.1401 of 2003

1. R. Subramaniam
2. R. Muthusamy
3. R. Chinnadurai @ Sivasubramaniam .. Petitioner

-Vs-

1. The Hindustan Petroleum Corporation Limited
rep. by its Regional Manager
3rd Floor A.P. Arcade (Singapore Plaza)
333, Cross Cut Road, Coimbatore 641 012.

2. M/s. Rangasamy Naidu & Sons
Dealer, Hindustan Petroleum Corporation Ltd.,
100 Palladam Road
Pollachi, Coimbatore District 642 001. .. Respondents

For petitioner : Mr. Palani Selvaraj

For respondents : Mr. Vijayan
for M/s. King & Patridge

:ORDER

The petitioners have filed the above writ petition seeking to issue a writ of mandamus directing the first respondent Corporation, a Statutory tenant under the Esso (Acquisition of Undertakings in India) Act, 1974 to vacate, surrender, deliver and hand over the possession of property in TS.No.487 & Door No.100, Palladam Road, Pollachi, Coimbatore District to the petitioners.

2. The case of the petitioners is briefly stated hereunder:
According to them, a piece and parcel of land measuring 128 ft. x 1 68 ft. together with the buildings and structures erected thereon for use as a Petrol and Lubrication Service Station with drive ways including foot path cutting and paving situated at No.75 Palladam Road, Pollachi bearing Town Survey No.487 was belonging to the petitioners' father late Ramasamy Gounder, who was running a retail petroleum outlet for which the buildings and structures were erected by him. The same was leased out to the Esso Standard

Eastern Inc, as it then was, now known as Hindustan Petroleum Corporation through a valid registered lease deed dated 05.11.1969 for a period of 10 years commencing from 01.07.1968 for storage and to run a retail petrol outlet. The said lease was expired on 30.06.1977 and thereafter it was not renewed, but the first respondent Corporation still remain in unlawful possession, of which the second respondent is a dealer. The said Ramasamy Gounder was died in the year 1984 and after his death, all the properties including the property subjected herein were partitioned among the petitioners as legal heirs in the year 1986 and the subjected property was jointly allotted to the petitioners. Even during the life time of the petitioners' father, the first respondent was asked to vacate the premises, but the first respondent has not taken any steps to vacate the premises. After the demise of their father, the respondents have defaulted in payment of rent. Accordingly, the petitioners have initiated eviction proceedings under the Tamil Nadu Buildings (Lease & Rent Control) Act, on the ground of willful default in RCOP.No.25 of 1996 on the file of District Munsif, Pollachi and filed RCOP. No.26 of 1996 for fixation of fair rent. The learned District Munsif has erroneously dismissed the eviction petition and fixed the fair rent, against which the petitioners filed RCA.Nos.4 and 2 of 2000 respectively before the Sub-Court, Pollachi and the same are pending.

3. It is further stated that subsequent to the expiry of lease on 3 0.06.1977, the first respondent is the trespasser in the property, as there was no valid lease deed executed in their favour. Accordingly, their possession after 30.06.1977 was not legal nor lawful as there was no lessor and lessee relationship exist. The first respondent is only a tenant at sufferance, who wrongfully continues to be in possession after extinguishing the lawful title. Therefore, the first respondent's possession subsequent to 30.06.1977 is illegal, unlawful, which nothing but depriving the rights of the petitioners to get vacant premises, the petitioners are constrained to file the above writ petition. Further, what was leased out was land, building, superstructure thereon and therefore the question of applicability of the Tamil Nadu City Tenants Protection Act does not arise.

4. The first respondent has filed a counter affidavit, wherein it is stated that the writ petition is barred under the principles of res judicata, in view of the rent control proceedings and pendency of R.C.A.No.4 and 2 of 2000 respectively on the file of Subordinate Judge, Pollachi. Though the lease deed stipulated the terms of lease as 10 years, the first respondent is continuing after expiry thereof being a statutory tenant under the Tamil Nadu Buildings Lease and Rent Control Act, 1960. In view of non-obstante clause in the said Act that the tenant cannot be evicted except in accordance with the provisions of the Act, the continuance of possession of the premises after the expiry of 10 years as indicated in the lease deed would still be legal and valid. The first respondent is a statutory tenant under the Rent Control Act, therefore the question of and allegations as to registered lease, expiry of lease, extension of lease, unlawful possession, tenant at sufferance, extinguishment of lawful title, provisions of Transfer of Property Act etc., are superfluous, unnecessary and unwarranted and out of context. There is enough legal embargo on the petitioners to file the present writ petition. Assuming the first respondent

is a tenant at sufferance is still entitled to possess the premises and carry on his lawful business until legally evicted under due process of law.

5. Heard, Mr. Palaniselvaraj, learned counsel for the petitioner and Mr. Vijayan, learned counsel for the contesting first respondent.

6. There is no dispute that land measuring 128 ft. x 168 ft. together with the buildings and structures at No.75, Palladam Road, Pollachi bearing Town Survey No.487, which was originally belonging to the petitioners' father late Ramasamy Gounder had leased out the same in favour of the first respondent through a registered lease deed dated 0 5.11.1969 for a period of 10 years commencing from 01.07.1968 for storage and to run a retail petrol outlet. It is also seen that the said lease was expired on 30.06.1977 and thereafter it was not renewed. However, the first respondent Corporation still remain in possession of which the second respondent is a dealer. It is the case of the petitioners that after the death of their father Ramasamy Gounder in 1 984 and out of the partition the subject property was jointly allotted to them. It is further seen that the petitioners have filed RCOP. No.25 of 1996 for eviction of the first respondent on the ground of willful default and RCOP.No.26 of 1996 for fixation of fair rent. Though the learned District Munsif dismissed the eviction petition, however, fixed the fair rent. It is stated that against the said orders, the petitioners have preferred an appeal in RCA Nos.4 and 2 of 2000 respectively and the same are pending on the file of Subordinate Judge, Pollachi as on date.

7. Mr. Palaniselvaraj, learned counsel for the petitioner vehemently contended that after expiry of lease on 30.06.1977, the possession of the first respondent is only in the capacity as a trespasser and there was no lessor lessee relationship between them. The learned counsel for the petitioner very much relied on the latest decision of the Apex Court in the case of Hindustan Petroleum Corporation Ltd., vs. Dolly Das reported in 1999 (4) S.C.C. 450, which deals about maintainability of a writ petition under Article 226 of the Constitution of India, Section 105 of the Transfer of Property Act, 1882 and Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd., and of the Undertakings in India of Caltex (India) Ltd.,) Act, 1977. Regarding maintainability, the following conclusion of their Lordships is relevant.

"7. In the absence of constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise. In the present case, the appellants have sought to exercise their powers under Section 7 of the Act and, therefore, though the other consequences may be contractual in nature, the exercise of the right being under a statute, it cannot be said that the respondent could not approach the writ court. "

In the light of the said conclusion and in view of the claim of the parties

there cannot be any dispute in considering the claim of the petitioner under Article 226 of the Constitution of India.

8. As in our case, in the case before the Supreme Court, the claim for renewal of lease was not followed by a deed and therefore, the lease has not been actually renewed. The clause requiring execution of the lease deed incorporating the terms and conditions is a condition which needs to be fulfilled when the option for renewal is acted upon. The following conclusion in para 12 is also relevant, which reads as under.

" 12. The lease had been granted with effect from 1.10.1969 in favour of M/s. Caltex (India) Ltd., and on the coming into force of the Act on 23.4.1977 the appellant had stepped into its shoes and from that day onwards the appellant has been in possession of the same till now. The crucial question whether the option for renewal either in terms of the lease deed or in terms of the Act had been availed of or not is the controversy between the parties now. Litigation between the parties has been going on from 1993 onwards. On the expiry of the term the deed provides for renewal for two terms of 10 years each on the same terms and conditions except for enhancement of rent and execution of fresh deed modifying the clause relating to renewal. The appellant gave notice of renewal in terms of the provisions of (i) the deed in the letter dated 23.5.1979, and (ii) the Act in the letter dated 13.9.1989. Now it is not necessary to examine the effect of renewal for the earlier period as even on the appellant's own showing it is invoking the statute in the latter notice and not the terms of the deed. If that is so, the appellant could seek for renewal only in terms of Section 7 of the Act which enabled it to renew the deed for a period of one term as originally granted. A covenant for renewal is not treated as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act. However, in the peculiar facts of this case, we think that it is not necessary to enter upon the merits of the controversy regarding the effect of clause 3 (g) of the lease deed or the rights available under the Act for renewal of the lease period. We are of the opinion that the ends of justice in this case will be met if we modify the order of the High court in the following terms:
(1) The appellant does not have power to claim exercise of option for any renewal of the lease beyond 30.9.1999;
(2) The appellant seeks for and is granted time to hand over vacant possession of the premises in question to the respondent on or before 31.3.2000, however, subject to filing of the usual undertaking in this Court within a period of four weeks from today;
(3) Rent payable is as per the terms of the lease deed, that is, Rs.1920 per month which shall be paid till the date of handling over the vacant possession;
(4) If any arrears of rent, as stated above, have not been paid, the same shall be paid within a period of three months from today; and
(5) The order made by the High Court to the extent it is inconsistent with our order shall stand set aside.

13. The appeal is disposed of accordingly. "

It is clear that the writ petition under Article 226 is maintainable, the first respondent herein does not have power to claim exercise of option for any renewal of the lease beyond 30.06.1977.

9. The decision of the Supreme Court in Dolly Das case (1999 (4) SCC 458) has been followed by a Division Bench of our High Court in the case of N.R. Vairamani vs. Union of India rep. by its Secretary, Ministry of Petroleum, Government of India, New Delhi reported in 2001 (1) C.T.C. 1. Almost, in similar circumstances, the Division Bench has concluded thus,

"6. ..... After the issuance of notice of termination of lease, respondent / Corporation has no right to exercise their option for renewal, and they have to vacate the premises. They are only rank trespassers. Considering their reply to the termination notice, for the reasons stated above, and in view of the decision of the Hon'ble Apex Court cited supra, in our humble opinion, in the facts of the given case, it is not necessary to get the eviction from the appropriate court, and the appellant is entitled to get the vacant possession of the disputed property by invoking writ jurisdiction. ..... "

10. The principle enunciated in Dally Das's case by the Supreme Court and N.R. Vairamani's case by the Division Bench of this Court has been followed by S. Jagadeesan,J., in the case of G. Mohamed Thajf vs. The Bharath Petroleum Corporation Ltd., reported in 2001 (1) C.T.C. 10. The following conclusion of the learned Judge in paragraphs 19 and 20 are relevant.

" 19. As per the above provision, the tenant is a person, who is liable to pay the rent under tenancy agreement expressed or implied and continues to be in possession of the land after determination of the tenancy agreement. So, the entire provision makes it clear that the tenant must be in possession of the land pursuant to the agreement expressed or implied. In this case, there is no agreement expressed or implied, since the renewal is at the intervention of the statute. That is why the Division Bench of this Court in the writ appeal held that "after issuance of notice of termination of lease, the respondent corporation has no right to exercise their option for renewal and they have to vacate the premises. They are rank trespassers".

20. The benefit of the City Tenants Protection Act can be claimed only by the tenants, but not by the trespassers. Once it is held by the Courts that after the expiry of the statutory lease period, the first respondent cannot be considered to be a tenant holding over and they are rank trespassers, this Court is of the opinion that the first respondent is not entitled for any benefit under the City Tenants Protection Act. Hence, the petitioners are entitled for the relief sought for in this writ petition. "

11. The learned counsel for the petitioner has also contended that after 30.06.1977, in the absence of any renewal of lease in favour of the first respondent, the first respondent was only a tenant at sufferance and not a tenant holding over. This position has been explained by the Supreme Court

in the case of R.V. Bhupal Prasad vs. State of Andhra Pradesh reported in 1995 (5) S.C.C. 698.

"8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical. "

12. In the light of the law laid down by the Apex Court and in view of the fact that the possession of the first respondent after 30.06.1977 was tenant at sufferance and liable for ejectment in due course of law, their possession was not legal nor lawful. In other words, the first respondent's possession was unlawful or litigious possession. Therefore, their possession cannot be considered to be a settled possession and was akin to a trespasser, though initially they had lawful entry. Following the said decision, the Division Bench of our High Court in the case of The Madura Talkies Pvt., Ltd., vs. The District Collector Madurai reported in 2000 (1) C.T.C. 68 has held that, the tenant at sufferance was not entitled to renewal after expiry of the lease period.

13. It is also relevant to refer the Division Bench decision of the Orissa High Court in the case of Smt. Dolly Das vs. Hindustan Petroleum Corporation Ltd., reported in A.I.R. 1994 Orissa 103.

"14. Before parting with this case, we think it appropriate to observe that the Hindustan Petroleum Corporation is a Government Company on whom the Central Government by notification vested the right, title and interest and the liabilities of the foreign company called the Caltex Petroleum Corporation. The said Government Company is not entitled to forcibly occupy the leasehold property of the petitioner in the garb of exercising a right under the Act which right the Company does not possess, as discussed earlier. The rights of a citizen to hold its property cannot be abridged or infringed in the manner in which the Corporation has been forcing itself in the pretended exercise of a power referable to an enactment which it does not possess. The Court cannot be a mute spectator when it is brought to the notice that a public sector undertaking is exercising a colourable power or an arbitrary power which on the face of the statute it does not possess. A Government Company like the Hindustan Petroleum Corporation is not expected of forcibly occupying the property of a citizen. In the aforesaid premises, we allow this writ application with the directions and observations made earlier.
"

14. In the light of what is stated above, though the petitioner has approached the Rent Control Court, in view of the development of law and in the light of the factual position, namely, that after 30.06.1977, the first respondent has no right to continue in the land and premises, who being a tenant at sufferance and liable to be evicted by orders of this Court. As rightly observed by the Division Bench of the Orissa High Court, the first respondent, a Government Company is not expected to forcibly occupy the property of a citizen.
In view of the above fact and in the facts of the given case, the petitioner is entitled to succeed in the writ petition. Three months time from today is granted to the first respondent Corporation to vacate and hand over the vacant possession to the petitioner. The first respondent will continue to pay for the use and occupation of the premises till the vacant possession is handed over to the petitioner, as per this order. The writ petition is allowed with no order as to costs. Consequently, connected WPMP., is closed.

Index:Yes
Internet:Yes
kh
To:
The Regional Manager
Hindustan Petroleum Corporation Limited
3rd Floor A.P. Arcade (Singapore Plaza)
333, Cross Cut Road, Coimbatore 641 012.